IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.MC.No. 3402 of 2007()

CRIME NO. 3/97 OF VARAPPUZHA EXCISE RANGE
CC.607/2002 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVUR

.....

PETITIONER: ACCUSED NO.1

JOHN @ THOMAS JOHN, S/O.THOMAS,
KALATHIPARAMBIL HOUSE, VALLUVALLY KARA,
KOTTUVALLY VILLAGE, PARAVUR TALUK.
ERNAKULAM DISTRICT.

BY ADV. SRI.C.S.MANU
SRI.ANOOP.V.NAIR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
EXCISE INSPECTOR, VARAPPUZHA, ERNAKULAM
DISTRICT NOTICE TO WHOM MAY BE SERVED ON
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3402 of 2007

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Dated this the 12th day of November, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 55 of the Kerala Abkari Act. Altogether there were four accused persons. The petitioner was not available. The co-accused have already been tried, found not guilty and acquitted. The case against the petitioner has been split up. The petitioner now finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner he is absolutely innocent. No summons was ever served on him. The records of the Court will also show that summons was ever served on him. The case is now pending as calender case before the learned Magistrate, though it is transferred to the list of long pending cases. The petitioner was employed abroad. He is now coming back to India. He is willing to surrender before the learned Magistrate, but he apprehends that when he surrenders his application for

bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate under Section 438 and/or under 482 Cr.P.C.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must

proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner submits that after expiry of the period of leave he will have to return to his place of employment abroad. In these circumstances he prays for an expeditious disposal of the case against him. It is for the petitioner, after appearing before the learned Magistrate, to seek expeditious disposal of the case against him. I have no reason to assume that the learned Magistrate will not consider his request. Needless to say, every endeavour must be made by the learned Magistrate to dispose of the case as expeditiously as possible.

(R. BASANT)
Judge

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